

BACKGROUND

In October of 1993, Public Law 1993 Chapter 350 took effect establishing a new program for regulating "medium-size" gravel pits. Gravel pits between 5 and 30 acres are exempt from the Site Location of Development Law if the owners or operators file notice with DEP and comply with the performance standards established in that law. This performance-based process is relatively simple and emphasizes technical assistance and compliance review by the Department rather than a full application review process.

Built into this program was a series of incentives to get unlicensed gravel pits licensed. One of those incentives was an amnesty period (DEP will not pursue any enforcement actions) for those owners or operators whose existing unlicensed gravel pit has expanded by more than 5 acres since 1970, but have not obtained a site license to come into compliance with the law. The amnesty provision ended on October 1, 1995. Another incentive in the program gave an owner or operator until October 1, 1996, to correct any existing site deficiencies.

In April, 1996, as part of the Site Law Reform Proposal, the Legislature created a new program for regulating gravel mining larger than 30 acres, topsoil, clay, silt, and quarries. The new program was based on the recommendations of the Land and Water Resources Council. This law (P.L. 1996 ch 700) removed the regulation of these commodities from the Site Law and placed them into a performance-based registration system.

FEES AND EXPENDITURES

Since the effective date of the law (October 1993), the Department has received 578 "Notices of Intent to Comply." Out of the 578 "Notices" received, approximately 35 of them represent rock quarries, 3 clay mines and 1 topsoil operation. The remaining 539 Notices represent gravel pits.

Prior to 1997, the annual fee structure did not support the one staff person dedicated to the program, and the program was funded through other dedicated revenues from land applications. With the support of the Maine Aggregate Association, the Department developed an appropriate fee increase to support this otherwise successful program. The new annual fee structure would not affect the small operators who remove less than 2500 cubic yards of material. Since the new annual fee increase went into effect, the program has been self-supporting for the one dedicated staff person and seasonal conservation aides. Table 1 contains a summary of revenues generated since the enactment of the program.

**TABLE I
SUMMARY OF REVENUE GENERATED**

Year	# Registered Pits Calendar Year	Registration Revenue	Annual Fee Revenue	Total Revenue
1993	13	\$3250	N/A	
1994	190	\$47,500	\$2600	\$50,100
1995	45	\$11,250	\$30,500	\$41,750
1996	26	\$6500	\$36,450	\$42,750
1997	36	\$9000	\$64,450	\$73,450
1998	32	\$8000	\$62,800	\$70,800
1999	39	\$9750	\$67,750	\$77,500
2000	38	\$9500	\$80,450	\$89,950
2001	41	\$10,250	\$84,500	\$94,750
2002	40	\$10,000	\$101,200	\$111,200
2003	43	\$10,700	\$95,400	\$106,100
2004	34	\$8500	\$108,100	\$116,600

VARIANCE REVIEW PROCESS

The registration system includes a variance process. It provides an opportunity for operators to vary from the specific statutory performance standards contained in 38 MRSA § 490-D (Performance Standards for Excavations) and 38 MRSA § 490-Z (Performance Standards for Quarries). This legislation states that variances may only be granted where explicitly allowed. Specifically, the rule "Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products" sets the criteria for granting variances under the new performance-based program for excavation activities, therefore, ensuring consistency and predictability throughout the variance review process. The variance review process is similar to the existing Site Law application process. Since July, 1997, the Department has processed approximately 70 variance applications. Under the performance standards, the Department can consider the compliance history as part of the approval process for a variance. Due to the history of an applicant operating in noncompliance, only one variance application has been denied and one was withdrawn by the applicant. Table II summarizes the types of variances received by the Department.

**TABLE II
VARIANCE REVIEW PROCESS**

Type of Variance Requested	Licenses Granted	Pending Review	Pending Baseline Completion
Excavation Below the Water Table	29		2
Larger Working Pit	23		
Externally Draining Pit	10		
Buffer Strip Reduction	6	1	
Steeper Sideslopes	2		

ENFORCEMENT

Now that the amnesty and compliance deadlines have ended, the Department has developed a policy regarding enforcement for still-unlicensed borrow pits and compliance issues for borrow pits and quarries registered under the program. This enforcement policy outlines the department's response for resolving enforcement cases against gravel pit operators and owners. The enforcement response and/or the assessment of monetary penalties for violations associated with other environmental laws, such as the Natural Resources Protection Act (stream and wetland violations), are not included in this policy.

While the enforcement policy is designed to provide fair and consistent results in enforcement actions, the Department recognizes that flexibility in an enforcement program is key to its effectiveness. There will be times when mitigating or extenuating circumstances will warrant adjustment of the penalty up or down, and determinations regarding the degree of non-compliance will still need to be made on a case-by-case basis in many situations.

Two basic scenarios are foreseen as needing a formal enforcement response: failure to submit a "Notice of Intent to Comply" and failure to comply with standards by the statutory deadline of October 1, 1996. Formal enforcement may occur in several ways. One way is an Administrative Consent Agreement (CA), which is an out-of-court settlement. Other types of enforcement action include court proceedings either in District or Superior Court. In most cases, violators of the law are offered the opportunity to resolve the violation through an Administrative Consent Agreement first. If the violation cannot be resolved through a CA, the next step is generally to pursue an enforcement action in District Court. The Attorney General's Office provides assistance to the Department in all formal enforcement actions.

Cases where a threshold violation has occurred will have a monetary penalty imposed based on the size of the working pit. In addition, past due annual fees that should have been paid after filing of a Notice of Intent was required is collected as an avoided cost. Provided below in Table III is a summary of the Department's enforcement actions since October 1996 for threshold violations.

**TABLE III
THRESHOLD VIOLATIONS**

Formal Enforcement Consent Agreement	Consent Agreements Pending	Total Civil Penalty	Past Due Annual Fees
46	2	\$160,480	\$39,500

The second scenario, which is the failure to comply with standards by the statutory deadline, results in a penalty based on the nature and severity of the non-compliance issue. These non-compliance issues are broken down into major or minor violations. Several factors are used by the Department to distinguish the difference between a major

and minor violation (level of significance). These factors include the following: sensitivity of the impacted area, number of violations involved, whether there were any potential public health risks, actual environmental damage, and duration of the violation. Some examples of major deficiencies include no secondary containment structure for onsite fuel storage, visible signs of fuel stained areas, working pit greater than 10 acres and external drainage that has or is impacting a protected natural resource. Examples of minor deficiencies are insufficient vegetative cover for reclaimed areas and reclaimed sideslopes steeper than 2H to 1V.

Operations that exhibit major deficiencies do not automatically require a formal enforcement response, nor does exhibiting a minor deficiency preclude a formal enforcement response. Typically, a major deficiency carries a minimum penalty of \$1500 and a minor deficiency \$750. Under certain circumstances, the performance standard violation may be adjusted upward because of prior violations and other avoided cost, such as economic benefit. Table IV below summarizes the Department's enforcement efforts since October 1996 for performance standard violations.

**TABLE IV
PERFORMANCE STANDARD VIOLATIONS**

Formal Enforcement Consent Agreements	Consent Agreements Pending	Civil Penalty Assessed
23	7	\$98,238

In addition to the above scenarios, the Mining Unit is responsible for mining operations licensed under the Site Location of Development Law. Based on Department records, there are approximately 139 active mine sites remaining under the Site Law. Table V below summarizes the Department's enforcement efforts since October 1996 for Site Law violations.

**TABLE V
SITE LOCATION LAW VIOLATIONS**

Formal Enforcement Consent Agreements	Consent Agreements Pending	Civil Penalty Assessed
9	3	\$56,853

To date, the Department has conducted 1070 compliance inspections. The overall compliance rate for the performance based program is 86 %. By far, the most common deficiency is insufficient buffers to property lines and public roads. An underlying problem associated with this deficiency is the inconsistency between local and state permitting requirements. For example, if a town does not have a local gravel ordinance for gravel pits less than 5 acres, the only applicable standard is a 10 foot setback from property lines (see Title 30-A, §3105). If the gravel pit expands beyond 5 acres, state jurisdiction is triggered and the setback requirement is 50 feet. By the time the gravel

operation triggers state jurisdiction and files a "Notice of Intent to Comply," they are already in violation because the excavation is within 10 feet of the property line. Other common deficiencies are no secondary containment structures for the storage of onsite petroleum products, external drainage, disposal of demolition debris and insufficient separation to the seasonal high water table.

DELEGATED AUTHORITY

The law allows a municipality to register for delegated authority. To date, no municipality has registered to assume jurisdiction of the program from the Department.

CONCLUSION

The performance-based regulatory process is relatively simple and emphasizes technical assistance and compliance review by the Department rather than a full application review process. To date, the program has been very successful as an alternative regulatory process. The Department considers the borrow pit program a success: compliance has improved dramatically from 67% to 86% as well as environmental awareness on the part of industry, through a process that is simpler, clearer, and more efficient.